

ORDER NO. 5498

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Competitive Product Prices
Priority Mail Contracts
Priority Mail Contract 604

Docket No. MC2020-114

Competitive Product Prices
Priority Mail Contract 604 (MC2020-114)
Negotiated Service Agreements

Docket No. CP2020-121

ORDER ADDING PRIORITY MAIL CONTRACT
604 TO THE COMPETITIVE PRODUCT LIST

(Issued May 1, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 604 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ USPS Request to Add Priority Mail Contract 604 to Competitive Product List and Notice of Filing Materials Under Seal, April 10, 2020 (Request).

II. BACKGROUND

On April 10, 2020, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Contract 604 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

The contract is intended to take effect two business days after the date that the Commission issues all necessary regulatory approval. See Request, Attachment B at 3. It is set to expire three years from the effective date. *Id.*

On April 13, 2020, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.² On April 16, 2020, Chairman’s Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to address the cost implications of the fulfillment, handling, and storage provisions in the contract. The Postal Service

² Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, April 13, 2020.

³ Chairman’s Information Request No. 1 and Notice of Filing Under Seal, April 16, 2020 (CHIR No. 1).

provided the requested information and a revised cost model on April 24, 2020.⁴

III. COMMENTS

The Public Representative filed comments on April 20, 2020.⁵ No other interested person filed comments. The Public Representative concludes that the contract meets the requirements to be classified as a new competitive product, and that the contract should generate sufficient revenues to cover costs during its first year. PR Comments at 2. He notes that the contract has a mechanism for the adjustment of contract prices in the second and third years. *Id.* at 3. He states that he agrees with the Commission's concerns regarding the financial model as expressed in CHIR No. 1. *Id.* He also notes that the Commission will have an opportunity to review the contract in its Annual Compliance Determination (ACD). *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Contract 604 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3040.134.⁶ Before adding a product to the competitive product list, the Commission

⁴ USPS Response to Chairman's Information Request No. 1, April 24, 2020 (Response to CHIR No. 1). The Postal Service also filed a motion for late acceptance of its response, which was due on April 23, 2020. USPS Motion for Late Acceptance of Response to Chairman's Information Request No. 1, April 24, 2020 (Motion). The Postal Service cites the complexity of its responses and the need to confirm key details with personnel as the reasons for its untimely filing. Motion at 1. The Motion is granted.

⁵ Public Representative Comments on Postal Service Request to Add Priority Mail Contract 604 to Competitive Product List, April 20, 2020 (PR Comments).

⁶ Formerly 39 C.F.R. § 3020.34. See Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020 (Order No. 5407) (effective April 20, 2020). A revised copy of the regulations can be found at: www.prc.gov.

must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3040.132(f), (g), and (h).⁷

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Contract 604 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's

⁷ Formerly 39 C.F.R. § 3020.32(f), (g), and (h). See Order No. 5407.

supporting justification, the Commission finds that Priority Mail Contract 604 is appropriately classified as competitive and is added to the competitive product list.

Mail Classification Schedule (MCS). In Order No. 5459, the Commission noted that it had “previously approved domestic Priority Mail [negotiated service agreements (NSAs)] where the service to be provided is defined by the contract itself and differs from the definition of Priority Mail found in MCS § 2110” and that it intends to discontinue this practice.⁸ The Commission has considered the contract-specific fulfillment, handling, and storage provisions of the instant contract,⁹ and determined that they are additional services that neither modify nor replace the Priority Mail service provided to the customer. Because the Priority Mail service under Priority Mail Contract 604 adheres to the definition of Priority Mail found in MCS § 2110, the Commission finds that the contract can properly be classified in MCS § 2505 with other Priority Mail NSAs.

Cost considerations. Because the Commission finds Priority Mail Contract 604 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service’s institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107.¹⁰ As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

⁸ Docket Nos. MC2020-97 and CP2020-101, Order Adding Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1 to the Competitive Product List, March 24, 2020, at 7 n.6 (Order No. 5459).

⁹ See Request, Attachment B at 2.

¹⁰ Formerly 39 C.F.R. §§ 3015.5 and 3015.7. See Order No. 5407.

Based on a review of the record, including the revised cost model filed with the Response to CHIR No. 1, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). The contract contains a price adjustment provision that adjusts contract rates during subsequent contract years. Request, Attachment B at 3. Combined with sufficiently high first-year cost coverage, the contract's price adjustments will help ensure that the contract will cover attributable costs in subsequent contract years. For these reasons, the Commission also finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3035.107(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. By its terms, the contract becomes effective two business days after the date that the Commission issues all necessary regulatory approval. See Request, Attachment B at 3. The contract is scheduled to expire three years from the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.¹¹

¹¹ *Id.* Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3035.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified at least seven days prior to the contract's expiration date. *Id.* at 3-4. During the extension periods, prices will be adjusted as described in the contract. *Id.* at 4. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Contract 604 as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Priority Mail Contract 604 (MC2020-114 and CP2020-121) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.

3. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Erica A. Barker
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3040, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2020-114 and CP2020-121. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3040—Competitive Product List

Negotiated Service Agreements*

Domestic*

Priority Mail Contract 604

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Domestic*

Priority Mail Contract 604

2500

Negotiated Service Agreements

2505

Domestic

2505.5

Priority Mail Contracts

- Priority Mail Contract 604

Baseline Reference

Docket Nos. MC2020-114 and CP2020-121

PRC Order No. 5498, May 1, 2020

Included Agreements

CP2020-121, expires May 4, 2023
